IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. JAMES MICHAEL COLEMAN, Defendant-Appellant.	)))))))))	S.CT. NO. 16-0900

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR BLACK HAWK COUNTY
HONORABLE STEPHEN C. CLARKE, JUDGE (JURY TRIAL, PRIOR OFFENSE STIPULATIONS, & SENTENCING)

APPELLANT'S REPLY BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On June 8, 2017, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to James Coleman, No. 6672512, Mt. Pleasant Correctional Facility, 1200 East Washington Street, Mt. Pleasant, IA 52641.

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Authorities

Iowa Code § 692A.105 (2015)

Iowa Code § 692A.104 (2015)

Iowa Code § 692A.101(23) (2015)

2009 Iowa Acts ch. 119, § 5

Iowa Code Chapter 692A (2015)

Iowa Code § 692A.124 (2015)

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Iowa Code § 692A.124 (2015)

Iowa Code § 692A.111 (2015)

People v. Poslof, 24 Ca.Rptr.3d 262 (Cal. Ct. App. 2005)

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[1] Appellant's Division II-VI issues are adequately addressed in his original Brief and Argument, and are thus not taken up in this Reply.

State v. Stickels, No. 19086-2-III, 2000 WL 1854128 (Wash. Ct. App. Dec. 19, 2000)

California Penal Code § 290

Wash. Rev. Code § 9A.44.130(5)(a) and (6)(a) (1999)

STATEMENT OF THE CASE

COMES NOW the defendant-appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's brief filed on or about May 19, 2017. While the defendant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

I. THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH THAT COLEMAN FAILED TO NOTIFY THE SHERIFF "WITHIN FIVE BUSINESS DAYS" OF HIS STAYING "AWAY FROM THE PRINCIPAL... RESIDENCE... FOR MORE THAN FIVE DAYS."

The State notes that section 692A.105 "uses the present participle to require notification where the offender 'is staying.'" (State's Br. p.21). Defendant respectfully urges that this language supports Defendant's interpretation of the statute rather than the State's. First, (as the State acknowledges) the statute does not require advance notification of where the offender "will be" staying but only of where he or she "is staying." Second, the language does not

require notification of where the offender "is staying" *any and all times* that they are away from the residence but only of where the offender "is staying" (present tense) "*when away from the principal residence of the offender for more than five days*." Notification is thus required only of where the offender "is staying" *at and after* the time the specified condition (being away for more than five days) is satisfied. That is, it is only when the stated condition of being away for more than five days is achieved that the obligation to notify is triggered and the five-business-day notification clock starts running.

The State suggests Defendant's reading of the statute would generate a "nonsensical" result in that it would sometimes involve the offender making a backward-looking notification of where he "had stayed." (State's Br. p.21). But this is an inherent feature of the five-business-day notification period. The structure of the registration statute is that certain events trigger an obligation to notify, and that the offender *then* has five-business days *after* the triggering event within to make the requisite notification. See e.g., Iowa Code §

692A.104(1)-(3) and (5) (2015). The result is that the offender may sometimes make a backward looking notification – that they moved five days ago, that they changed employment five days ago, that they drove a friend's vehicle five days ago[2], etcetera. This fact does not make defendant's reading of section 692A.105 non-viable.

The State notes that Iowa Code section 692A.101(23), defining "Relevant information", includes "Temporary lodging." The State appears to suggest that any time an offender is away from their principal residence (no matter the duration of the stay) they are establishing or changing their "temporary lodging". See (State's Br. p.18, 24, 26-27). Defendant respectfully disagrees with this interpretation. Iowa Code section 692A.105 is titled "Additional registration requirements – temporary lodging". Iowa Code § 692A.105 (2015). See also 2009 Iowa Acts ch. 119, § 5 (enacting

[2] See e.g., Iowa Code § 692A.101(23)(a) (defining "Relevant information" to include residence, employment information, and "Vehicle information for a vehicle… operated by an offender…."); § 692A.104(3) (requiring notification within five business days of a change in relevant information).

legislation, using same title). That section would appear to define what "temporary lodging" means.[3] Pursuant to that section, temporary lodging is established when the offender is "away from the principal residence of the offender for more than five days." Iowa Code §692A.105 (2015) (emphasis added). If the offender is away from the principal residence for only five days or less, temporary lodging is not established and no obligation to notify is triggered thereto.

Even if this Court concludes that temporary lodging under section 692A.101(23)(a)(18) may be established through some lesser absence, however, Defendant was tried and convicted for a failure to make in-person notification under *section 692A.105*, not for noncompliance under 692A.101(23)(a)(18) and 692A.104(3). See (Jury Instruction 15) (App.22). The condition triggering the obligation to make in-person notification under section 692A.105 (and thus starting the five-business-day notification clock running) is the

[3] No other definition of "temporary lodging" is provided in Chapter 692A.

offender's being "away from the principal residence of the offender for more than five days". This is the pertinent "change" under section 692A.105. The obligation to notify is triggered on the sixth day of absence, and the five-business-day notification clock starts running at that time.

The State disagrees with Defendant's position that Chapter 692A does not act as a mechanism for providing around-the-clock monitoring or obligate an offender to keep the sheriff notified of his physical location at all times. (State's Br. p.22). The State points to section 692A.124's authorization of electronic monitoring for certain offenders, stating that "Coleman had one of those electronic tracking/monitoring systems" and that "[f]or [him], chapter 692A *was* intended to supplement the ordinary authorization for conditions of probation/supervision with additional measures that would enable around-the-clock monitoring." (State's Br. p.22-23). But Coleman's GPS monitoring obligation was imposed only as a condition of probation, not as a registry obligation under Chapter 692A. See (Trial p.140

L.14-p.141 L.17, p.145 L.18-23). See also Iowa Code § 901B.1 (2015) (including electronic monitoring as a probation and parole option under the corrections continuum); Iowa Code § 907.3(3) (2015) (authorizing suspended sentence probation with probation conditions and supervision). While section 692A.124 does authorize electronic monitoring as a registry condition for certain offenders, it certainly does not impose such monitoring for all offenders (and it did not do so for Coleman).[4] More importantly, the *registration and notification scheme* under chapter 692A (applicable to all sex offenders), does not act as a mechanism for providing around-the-clock monitoring or require the offender to keep the sheriff notified of his physical location at all times – it requires notification only if and when one of the specified events triggering a registration or notification obligation occur.

[4] Nor does Chapter 692A authorize any criminal penalty for violation of electronic monitoring conditions, even where imposed as a registry obligation. See Iowa Code § 692A.111 (2015) (defining penalties for failure to comply with certain provisions of Chapter 692A).

The State cites People v. Poslof, 24 Ca.Rptr.3d 262 (Cal. Ct. App. 2005) and State v. Stickels, No. 19086-2-III, 2000 WL 1854128 (Wash. Ct. App. Dec. 19, 2000) in support of its interpretation of section 692A.105. Those cases, however, are not on point.

The California statute at issue in Poslof provided that an offender "shall be required to register with the… city… or… county… *within five working days of coming into, or changing his or her residence or location….*" Poslof, 24 Cal.Rptr.3d at 266 (emphasis in original; quoting then-existing version of California Penal Code § 290). The defendant there argued the statute required a finding that he had "resided… at [the new location] [f]or… 5 or more consecutive working days" before any obligation to register would be triggered under the statute. Id. at 269. The court rejected that reading of the statute, noting that "[t]he reference in the statute to 'five working days' pertains to the time in which a sex offender must notify law enforcement of his location upon entering or leaving a jurisdiction or establishing a second or additional location"

(i.e., a "five-day notice period") and that *"[t]here is no language in [the statute] that states or implies that a sex offender need not register if he stays at a second or additional location for less than five consecutive days*." Id. (emphasis added). In other words, the California statute at issue in Poslof contained *only* the five-business-day notification period; it did not separately require (as does Iowa Code section 692A.105) any particular period of presence or absence before the obligation to notify would be triggered. Unlike the California statute in Poslof, the Iowa Statute specifically references *two* separate and distinct time periods – one defining when an obligation to notify is triggered (an absence of more than five days) and another defining the time period within which the offender must make notification after the triggering event is satisfied (five-business days). The Poslof decision is thus inapposite here.

The Washington statute at issue in Stickels imposed certain registration and notification obligations when an offender "changes his or her residence address" or "ceas[es] to have a fixed residence." Stickels, 2000 WL 1854128 at *2

(quoting former Wash. Rev. Code § 9A.44.130(5)(a) and (6)(a) (1999)). The defendant there argued the State failed to prove his abandonment of his registered residence in that it failed to show he did not intend to eventually return to that residence at some unknown future time. The court rejected that argument, concluding the State had "proved that he changed his actual physical 'residence'" (a term which was not defined in the Washington statute) in that he "manifested intent to be elsewhere" by "his failure to return for three weeks to the registered address." Stickels involved a different type of registry violation (change of residence) and dissimilar statutory language than at issue in the instant prosecution. That decision is thus inapposite here.

CONCLUSION

For the reasons stated in Division I[5] of his original Brief and Argument as well as the above Reply, Defendant-Appellant Coleman respectfully requests that this Court reverse his conviction and remand this matter to the district court for entry of a judgment of acquittal.

ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Reply Brief and Argument was $__0__, and that amount has been paid in full by the State Appellate Defender.

MARK C. SMITH
State Appellate Defender

VIDHYA K. REDDY
Assistant Appellate Defender

[5] The additional issues raised in Divisions II-VI of Appellant's Brief and Argument are adequately addressed therein, and are thus not taken up in this Reply.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS

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/s/ Vidhya K. Reddy Dated: *6/8/17*

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